J 21.23 : 89100626

Ref. No. 395

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

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| UNITED STATES OF AMERICA,<br>Complainant,<br><br>v.<br><br>SIZZLIN HOT RESTAURANT<br>Respondent. | 8 U.S.C. Section 1324a<br>Proceeding<br>Case No. 89100626 |

**SUMMARY DECISION AND ORDER**
**(April 12, 1990)**

**Paul S. Cross, Administrative Law Judge**

In this matter, by Complaint filed December 29, 1989, the United States of America (USA) seek to fine Hsuea Mei Sung dba Sizzlin Hot Restaurant, 151 South College Avenue, Fort Collins, CO, $1,000 for employing Shuang Zi Wang. It is alleged that Ms. Wang is an alien not authorized to work.

By motion dated March 30, 1990, USA seeks a summary decision. Respondent is not represented by counsel, but opposes the complaint. Because, the facts are clear, I grant the motion for summary decision.

Shuang Zi Wang was born in Shanghai, Mainland China, has a permanent address at Shanghai and is a citizen of China. She arrived in the United States on October 14. 1988 and came as a student. Because she was a student, she received a social security card. She also had a student visa, and as of September

12, 1989 she was enrolled at Colorado State University (CSU) where she attended morning classes.

She waited on tables at Sizzlin Hot Restaurant, Fort Collins, CO on an ad hoc basis, receiving tips, meals and $70 a month rent money to help out with her CSU expenses.

Peggy Chen owner of Sizzlin Hot admits all of the foregoing but says that Ms. Wang is her friend not her employee. However, it is clear that Ms. Wang became an employee of Sizzlin Hot on or about June 1989 and that she worked there at least into August 1989.

The U.S. Department of Justice (DOJ) Immigration and Naturalization Service (INS) takes the position that Ms. Wang is an alien not authorized to work in the United States and that Sizzlin Hot should be penalized for hiring her. However, President Bush issued an Executive Order on April 12, 1990, that protects Chinese nationals including students who were in the United States on or after June 5, 1989 from deportation to their homeland and affirms their right to be employed in the United States through January 1, 1994. As will not be forgotten, Chinese students in the United States made common cause with their fellow students in China. It also is well known that many of the latter were killed or incarcerated by Chinese authorities

on account of the desire of the students for Chinese political reforms. Because of the violent suppression of the student led democracy movement, well prior to the Executive Order of President Bush, the Department of Justice was ordered by the President not to deport Chinese students. The Executive Order makes these directions more explicit. Indeed, President Bush vetoed legislation providing rights to the students for the simple reason that the legislation was unnecessary and might in fact worsen the plight of students and other freedom fighters in China.

Unfortunately, it appears that INS is not on the same page with DOJ and the President. Clearly, there is an understanding of both the Executive and Congressional branches of the Federal Government that the Chinese students can stay in the United States. Because they can stay, they were and are obligated to feed and house themselves. It is exceedingly doubtful that the Chinese government will pay for their subsistence, thus, they must work.

I therefore conclude that Ms. Wang is and was authorized to work.

As a general rule in administrative proceedings, the law in existence at the time of decision is applied, unless to do so

works an injustice. Here, there would be injustice only if INS should prevail in its view of the law, which differs from that of the President and Congress and perhaps DOJ itself. Of course it might be argued that the Executive Order is not specifically nunc pro tunc, but the key here is that the order does provide rights for students who were here on or after June 5, 1989. Therefore, the order does have retroactive effect. To find it retroactive for some purposes (protection against deportation and reentry into the United States) and not for another (work) makes no sense.

As indicated above, Ms. Wang was and is authorized to work at Sizzlin Hot. As a consequence, the Complaint herein is dismissed.

Paul S. Cross

By Paul S. Cross, Administrative Law Judge, at Washington, D.C. on this 12th day of April, 1990.

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Please note the following corrections to my decision of April 12, 1990 in this matter.

Page 1 - third line from bottom. Delete the period after "October 14" and insert a comma.

Page 4 - line 8, before "reentry" insert "for."

Page 4 - line 13, after "dismissed." insert footnote reference 1/.

Insert Footnote as follows:

1/ In a "Catch 22" type of argument, INS also complained that there is no Form I-9 for Ms. Wang. However, the form contains no provision or space for Ms. Wang in that she is not "An alien authorized by the Immigration and Naturalization Service to work..."

Paul S. Cross

By Paul S. Cross, Administrative Law Judge, on the 13th day of April, 1990.

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